

### REMARKS/ARGUMENTS

In the specification, the pages 5, 7 and 9 have been amended to correct minor editorial problems.

With regard to the preliminary amendment, the changing of a citation of prior art does not constitute new matter but merely corrects a citation error. It is well settled that the application is addressed to one of ordinary skill in the art cognizant of the prior art. Then by its very definition, prior art cannot be new matter.

The instant amendment to the specifications is based on the assumption that the preliminary amendment was entered into the record. Therefore, the material canceled is the material objected to by the Examiner. . In any event, the references are included in the prior art statement.

Claims 1 - 10 remain in this application. Claims 9 and 10 has been added.

In response to the Office Action of September 2, 2003, Applicant requests re-examination and reconsideration of this application for patent pursuant to 35 U.S.C. 132.

### **Rejections under 35 USC 112**

Claims 1 - 6 stand rejected as indefinite in the use of the term, "procedure," at different places in the claims. Claim 1 has been amended to reduce the use of the term to a single incidence, therefore any reference is to that procedure. The preamble of the claim has been amended to indicate an intervention to correct vision and the intervention includes a procedure based on an examination and that procedure is recited as being performed.. Claim 1 has also been amended to

refer to the patient's eye since the procedure may be on either eye, singly, or both. Once a particular eye of the patient has been chosen, the steps are directed to the same eye.

Claims 5 and 6 have been amended to recite a proper "means" plus function element in the claims. The function of the RTE and the construction are found on pages 7 - 14 of the specification. The structure is depicted in Fig. 2.

These amendments to the claims correct the informalities pointed out by the Examiner in the 35 USC 112 rejection.

#### **Rejections under 35 USC 102(b)**

Claims 1 - 2, 4 - 5, and 7 stand rejected as anticipated by Rajan et al. With regard to claim 1, the claim has been amended to require a mapping step of the passage of intersecting light rays through the eye. By determining the angle of intersection, the necessary correction of the eye can be found that results in a predicted change in the passage of the light rays through the eye to improve vision.

Rajan et al has no such teaching. The patent is directed to topographical shape of the cornea and pressure measured at certain points on the eye creating the shape. The correction is projected by changing the pressure at certain points to result in a change in curvature of the cornea affecting vision. Rajan et al survey the cornea of the eye to generate the "nodal points" and use an ultrasound measurement device to determine thickness at those points. Using other materials computations, such as Young's modulus and Poisson's ratio, and intraocular pressure, a theoretical loading of the node can be calculated. the vision objectives of the procedure are specified as desired curvature at certain points on the cornea. The number, size and shape of the cuts are calculated that will

change the loading at the nodal points and thus change the curvature of the cornea.

This is a completely different approach than that recited in the amended claims. While Rajan et al do disclose a model and predict outcomes, the model is based on topography and the outcomes based on changes in pressure while the instant claimed methods are based on reflection, refraction and transmission of light.

With regard to claim 7, the term, “optical model,” has been amended to more clearly define the process steps. While any model of the eye might be referred to as an optical model, the process step claimed is constructing a model of the eye based on internal optics existing therein. As mentioned above, this is completely different than the physical engineering approach of Rajan et al.

Therefore, the reference does not anticipate the claims because it does not teach the invention claimed in the rejected claims.

#### **Rejection under 35 USC 103(a)**

Claims 3, 6 and 8 stand rejected as obvious in view of Rajan et al and Herekar et al. As stated above, Rajan et al do not teach the claimed invention. To modify the Rajan et al reference by adding historical data input and comparison steps would merely result in a method of topography and pressure which could be repeated. This method would be totally different from the claimed optical system claimed in the instant claims.

#### **SUMMARY**

In light of the foregoing remarks and amendment to the claims, it is respectfully submitted

that the Examiner will now find the claims of the application allowable. Favorable reconsideration of the application is courteously requested.

Respectfully submitted,

  
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